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19

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
21 **FOR THE COUNTY OF LOS ANGELES**

22 THE PEOPLE OF THE STATE OF §  
23 CALIFORNIA, §

24 and §

25 THE PEOPLE ex rel. Michael Wilson, §  
26 Lucius Allen, and Eve Allen, Relators, §

27 vs. §  
28 §

Case No. BC 367873

**SECOND AMENDED**  
**COMPLAINT FOR VIOLATION**  
**OF CAL. INS. CODE § 1871.7;**  
**DEMAND FOR JURY TRIAL**

1 BRISTOL MYERS SQUIBB, INC.; AND  
2 JOHN DOES 1-10,  
3  
4 Defendants.

§  
§  
§  
§  
§  
§

FILED IN CAMERA AND  
UNDER SEAL PURSUANT TO  
CAL. INS. CODE § 1871.7(e)(2)

5  
6 **SECOND AMENDED COMPLAINT FOR DAMAGES UNDER CALIFORNIA INSURANCE**  
7 **CODE § 1871.7 AND DEMAND FOR JURY TRIAL**

8 COME NOW THE PEOPLE and relators MICHAEL WILSON, LUCIUS ALLEN, and EVE  
9 ALLEN on behalf of THE PEOPLE and complain and allege as follows:

10 **I. INTRODUCTION**

11 1. The People of California and Relators Michael Wilson, Lucius Allen, and Eve Allen bring  
12 this action pursuant to Cal. Ins. Code § 1871.7 to recover penalties and damages arising from  
13 fraudulent and illegal practices of Bristol Myers Squibb, Inc. ("BMS").  
14

15 2. BMS, in marketing several drugs, engaged in a course of illegal and fraudulent conduct  
16 aimed at doctors, health care providers, pharmacists, and insurance companies. Specifically, the  
17 People and Relators allege that in order to increase its market share, BMS unlawfully provided high-  
18 prescribing doctors with lavish gifts, expensive meals, speaking honoraria, trips, and hotel stays, both  
19 in order to induce them to prescribe BMS' drugs and in order to reward them for doing so. BMS  
20 sought to conceal this kickback scheme by various means, including by employing public relations  
21 firms and other third-party companies to oversee these programs and cut checks to the physicians.  
22

23 **II. PARTIES**

24 3. The People are represented by the California Insurance Commissioner Dave Jones  
25 ("Commissioner"), pursuant to Cal. Ins. Code § 1871.7(e)(4)(A), which authorizes the Commissioner  
26 to intervene in an action brought pursuant to Cal. Ins. Code § 1871.7(e)(1). The Commissioner has  
27 filed his notice of intervention with the Court concurrently with the filing of this Amended Complaint.  
28

1 The district attorney has declined to intervene in this case.

2 4. Relator Michael Wilson is a citizen of the United States and a resident of the State of  
3 California. He was employed by BMS as a sales representative for more than six years, until 2004,  
4 and as such, developed direct and independent knowledge of the facts set forth herein. Michael  
5 Wilson is thus the original source of the facts and information set forth in this Complaint concerning  
6 the activities of BMS. The facts averred herein are based entirely upon his personal observation and  
7 documents in his possession, as well as the observations and documents in possession of Mr. and Mrs.  
8 Allen.  
9

10 5. Relator Lucius Allen is a citizen of the United States and a resident of the State of  
11 California. He was employed by BMS as a Cardiovascular Metabolic Risk Specialist until 2003, when  
12 he went on disability. He remains on disability with BMS. While serving as a Cardiovascular  
13 Metabolic Risk Specialist, Mr. Allen developed direct and independent knowledge of the facts set  
14 forth herein. He is thus an original source of the facts and information set forth in this Complaint  
15 concerning the activities of BMS. The facts averred herein are based entirely upon his personal  
16 observation and documents in his possession, as well as the observations and documents in possession  
17 of Mr. Wilson and Mrs. Allen. Prior to his employment with BMS, from 1969 to 1979, Mr. Allen was  
18 a professional basketball player. He played on several teams, including the Milwaukee Bucks and the  
19 Los Angeles Lakers. He was also a member of one of Coach John Wooden's legendary UCLA NCAA  
20 Championship teams.  
21  
22

23 6. Relator Eve Allen is a citizen of the United States and a resident of the State of California.  
24 She was employed by BMS as an Integrated Health Manager from about 1996 to about 2002. She  
25 developed direct and independent knowledge of the facts set forth herein during this period of her  
26 employment at BMS. She is therefore an original source of the facts and information set forth in this  
27 Complaint concerning the activities of BMS. The facts averred herein are based entirely upon her  
28

1 personal observation and documents in her possession, as well as the observations and documents in  
2 possession of Mr. Wilson and Mr. Allen.

3 7. Relators have provided to the district attorney and the insurance commissioner of  
4 California a full disclosure of substantially all material facts, as required by Cal. Ins. Code §  
5 1871.7(e)(2).  
6

7 8. Defendant Bristol-Myers Squibb is incorporated in the State of Delaware, with its corporate  
8 headquarters in New York, New York. BMS is principally engaged in the manufacture and sale of  
9 pharmaceuticals including prescription pharmaceuticals falling under the jurisdiction and regulation of  
10 the U.S. Food and Drug Administration.

### 11 III. JURISDICTION AND VENUE

12 9. This action arises under section 1871.7 of the California Insurance Code.

13 10. At all times material to this Complaint BMS regularly conducted substantial business  
14 within the State of California, maintained permanent employees and offices in California, and made  
15 and is making significant sales within California. BMS is thus subject to personal jurisdiction in  
16 California.  
17

18 11. Venue is proper in this district because BMS transacts business in this district.  
19

### 20 IV. FACTS AND GENERAL ALLEGATIONS

#### 21 A. BMS Used Kickbacks in Order to Encourage Doctors to Prescribe BMS Drugs

22 12. The legislative findings and declarations associated with section 1871.7 make clear that the  
23 Legislature was concerned with health care fraud: "Health insurance fraud is a particular problem for  
24 health insurance policyholders. Although there are no precise figures, it is believed that fraudulent  
25 activities account for billions of dollars annually in added health care costs nationally. Health care  
26 fraud causes losses in premium dollars and increases health care costs unnecessarily." Cal. Ins. Code  
27 § 1871(h).  
28

1 13. The kickback scheme that BMS pursued added substantial costs to health care in the state of  
2 California.

3 14. California state law prohibits BMS from providing kickbacks to physicians and medical care  
4 providers. Specifically, California Business & Professional Code § 650(a) provides:

5 [T]he offer, delivery, receipt, or acceptance by any person licensed under this division or  
6 the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage  
7 dividend, discount, or other consideration, whether in the form of money or otherwise, as  
8 compensation or inducement for referring patients, clients, or customers to any person,  
9 irrespective of any membership, proprietary interest or co-ownership in or with any  
10 person to whom these patients, clients, or customers are referred is unlawful.  
11

12 15. In addition, California Insurance Code § 1871.7(a) prohibits the knowing employment of  
13 “runners, cappers, steerers or other persons to procure clients or patients . . . to perform or obtain  
14 services or benefits under a contract of insurance or that will be the basis for a claim against an insured  
15 individual or his or her insurer.”  
16

17 16. California Penal Code § 549 makes it illegal for any firm or corporation to “solicit[], accept[],  
18 or refer[] any business to or from any individual or entity with the knowledge that, or with reckless  
19 disregard for whether” that individual or entity will present or cause to be presented any false or  
20 fraudulent claim for payment of a health care benefit.  
21

22 17. In order to encourage physicians to prescribe BMS’ pharmaceuticals for both approved uses  
23 and for unapproved, off-label uses, BMS established a system in which kickbacks were regularly  
24 provided to physicians who were prescribers of large amounts of BMS drugs, including, but not  
25 limited to Abilify, Avapro, BuSpar, Cefzil, Glucophage,<sup>1</sup> Glucovance, Monopril, Plavix, Pravachol,  
26 Praviguard, Serzone, and Tequin. Moreover, BMS’ provision of kickbacks constituted a continuing  
27

28 <sup>1</sup>All references to Glucophage and Glucovance include Glucophage XR and Metaglip, formulations of Glucovance that BMS also promoted by using kickbacks.

1 pattern and course of conduct that began at least as early as 1999 and continued during the entire time  
2 Ms. Allen, Mr. Allen, and Mr. Wilson worked at BMS, up until late 2004, and continued to do so after  
3 Mr. Wilson left. This pattern and course of conduct constitutes a continuing violation of the statute.

4 18. BMS' entire culture encouraged the provision of kickbacks. A document entitled "Bristol-  
5 Myers Squibb Cultural Expectations" published by the company for its sales reps emphasizes the  
6 importance of "risk taking." One category of risk taking includes taking "calculated risks." To  
7 illustrate this positive quality, the document describes an individual who "[c]reates increased Market  
8 demand for product through programs to opinion leaders, customers, using traditional and non-  
9 traditional means. TBM [territory business manager, or sales rep] sets up top speaker in nation on  
10 product and invites entire district's top physicians based on 'positive reports' from other trusted  
11 colleagues. Or runs a weekend symposium and puts most of money for the product in one big splash  
12 program that works well." The document also encourages sales reps to "commit[] company funds and  
13 personnel to a customer or customer group that could realize gains that will have district/region  
14 impact." The document also suggests that it is important to "take entrepreneurial risks," including by  
15 being "will[ing] to expend significant resources in the attempt to achieve impossible objectives." The  
16 document also states that BMS values "innovation," which includes doing "things new to the job."  
17 Some of these "new things" include "Lunch and Learn activities conducted with themes, special foods,  
18 speaker programs are above the ordinary, such as Family-Centered Programs, Nurses Night Out, etc."

19  
20  
21  
22 *1. In Its Provision of Kickbacks, BMS Targeted High-Prescribing Physicians*

23 19. In addition to encouraging a culture that encouraged and supported the provision of kickbacks,  
24 BMS established formal internal guidelines for the award of these benefits to physicians, which were  
25 based entirely on the amount of prescriptions written by the physicians and the ability of the physician  
26 to influence other physicians to begin prescribing BMS drugs. For example, a BMS Sales Action  
27 letter dated August 15, 2003 states, "We need to ensure that VH [very high prescription volume] and  
28

1 H [high prescription volume] MDs are called on with more frequency. You will be in the same group  
2 of zip codes every other week, seeing VH and H MDs but not necessarily M [medium volume  
3 prescribers], L [low volume], and VL [very low] with same frequency.” The same document states,  
4 “Our call and sample activity shows we are spending too much time and Resources with M, L, and VL  
5 MDs. This must stop ASAP as it does not provide ROI, profit or maximum IC [incentive  
6 compensation , or sales staff bonuses].”

8 20. BMS also produced a sales plan called “Rounding up the Docs!” This plan instructs BMS sales  
9 representatives at dinner events to “Gain commitment to prescribe in specific patient types!” It goes on  
10 to direct them to “Monitor Weekly NRx [number of new prescriptions, by doctor] reports and Weekly  
11 Prescriber Reports to evaluate the success of the program,” and then “Hold customers accountable.”

13 21. BMS targeted physicians who wrote high volumes of prescriptions for patients covered by  
14 certain private insurance companies. For example, a June 24, 1998 memo from BMS Regional Vice  
15 President Frank Valenti instructs sales representatives to “invite top 10 Pacificare writers per POD<sup>2</sup> to  
16 all DME [Direct Marketing Expense] programs” in order to increase sales of the BMS drug Pravachol.  
17 Direct Marketing Expense or DME programs include, among other things, lavish dinners and trips to  
18 resort hotels for doctors and tickets to sporting events and concerts.

19 22. A January 2001 document contains the names of high prescribing physicians for several BMS  
20 drug classes, broken down by the private insurer who covered their patients. The document includes  
21 “Very High” prescriber lists for Prudential, Cigna, Maxicare, Blue Cross/Blue Shield of California,  
22 HMSA Health Plan Hawaii, Scan Health Plan, United Health Plan, Caloptima, Argus, Merck-Medco,  
23 PCS, Proserve, Express RX/Value RX/DPS, Caremark, Medimpact/Medcare, Envoy, Aetna Pharmacy  
24 Management, Pharmaceutical Care Net, Advance PCS, Rx America, Prescription Solutions, Wellpoint  
25 Pharmaceutical Management, First Health, Sav-Rx, Pacificare, and Health Net.

27  
28 <sup>2</sup> During the time of Mr. Wilson’s employment with BMS, BMS’ basic sales organization was a “POD.” PODs consisted of groups of sales representatives promoting the same drugs in the same geographical territory.

1 23. A September 25, 2003 document targeted the top 10 prescribing Health Net physicians for paid  
2 lunches to increase new prescriptions of Pravachol. A BMS 2004 Plavix Business Plan for Santa  
3 Monica instructs sales representatives to track new prescription-writing data. It tells sales  
4 representatives to "know who is writing and who is not writing."  
5

6 ***2. BMS Also Targeted Physicians in Practices with High Numbers of Patients Enrolled in***  
7 ***Private Insurance Plans and Sought to Influence Formulary Decisions by Using Kickbacks***

8 24. As part of BMS' "managed care" plan, integrated health managers worked with physicians  
9 who had high numbers of patients in managed care plans and with the managed care plans themselves  
10 to increase the market share of BMS drugs. In particular, BMS targeted physicians on formulary  
11 committees, providing them with monetary incentives in order to encourage placement of BMS drugs  
12 on certain managed care formularies. BMS also used kickbacks to influence physician groups and  
13 physicians to prescribe BMS drugs, not only as a regular practice, but particularly immediately after a  
14 BMS drug was put on the formulary of a managed care program. These efforts were known as "pull  
15 through," and were meant to increase the volume of prescriptions written for on-formulary BMS  
16 drugs, and thereby increase the placement of BMS drugs as "Tier I" on the formularies. Indeed, the  
17 bonus program at BMS measured representatives' performance based on BMS the "level of formulary  
18 access" they accomplished as well as on "pull through coordination of formulary products."  
19

20 25. As part of their efforts to get their drugs on the formularies of managed care plans, BMS  
21 employees circulated "Best Practices," showing how much money was spent to influence physicians in  
22 certain practices important to managed care plans, and the "ROI" or "return on investment," meaning  
23 the increase in prescriptions that occurred due to BMS' investment. One such "Best Practice" was  
24 implemented at the Riverside Medical Clinic in order to target patients of PacifiCare. A document  
25 detailing the "Best Practices" implemented there in 1999 shows that the clinic had 20,000 "PacifiCare  
26 Lives" of the 90,000 lives it managed. In order to increase market share within this medical group,  
27 BMS spent \$25,500, including \$10,000 to help the medical director of the group identify "all  
28



1 secondary prevention patients to be placed” on Pravachol. BMS also spent money to invited “key  
2 opinion leaders” to regional drive-tos—programs at hotels in the region sponsored by BMS. The plan  
3 also notes that “DME Events” will be “targeted” to “PacifiCare providers.” “DME” events are direct  
4 marketing events, which include drive-tos and fly-tos, in which physicians’ accommodations (and  
5 often travel) are paid for by BMS, dinner events, and the provision of other perquisites, such as event  
6 tickets, smaller meals, and gift cards. The document also tracks “ROI”—showing that between July  
7 1999 and December 1999, Pravachol market share grew from 20% to 30% in this medical group due to  
8 BMS’ provision of kickbacks to physicians in the medical group.  
9

10 26. At one point, BMS spent over \$80,000 in order to get Pravachol on the formularies of Blue  
11 Cross, PacifiCare, WellPoint, Prudential, and HealthNet, including \$18,000 to target key medical  
12 groups in California that had numerous “lives” on these plans. A 1999 BMS “tactical plan” for getting  
13 its drugs on the formulary for the MedPartners network includes spending \$1,500 on preceptorships  
14 for physicians and sponsoring a \$5,000 “leadership meeting.”  
15

16 27. BMS continued to engage in such practices until at least 2006. Upon information and belief, in  
17 that year BMS used monetary incentives to encourage United Healthcare to include Plavix on its  
18 formulary.  
19

20 28. Both by paying individual physicians and by targeting formulary committees and physician  
21 practice groups with monetary incentives, BMS sought to, and did, influence physicians to write more  
22 prescriptions for BMS products. BMS knew that its provision of kickbacks to these physicians was  
23 illegal and made efforts to conceal its illegal, fraudulent scheme. Moreover, BMS’ provision of  
24 kickbacks caused prescriptions to be written that were paid for by private insurance companies. Had  
25 the private insurers known that these prescriptions were written due to a fraudulent kickback scheme,  
26 they would not have provided reimbursement for these prescriptions, because to do so would be to  
27 condone illegal behavior.  
28

1        **3. Direct Marketing Expenses: BMS Provided Gifts to Physicians to Increase Market Share**

2        29. BMS instructed its sales representatives to make thousands of payments for the purpose of  
3 encouraging doctors either to prescribe or to recommend the prescription of BMS drugs—among  
4 them, Pravachol, Plavix, Glucovance, Glucophage, Avapro, Abilify, Cefzil, Buspar, Serzone, and  
5 Monopril. Sales representatives were also instructed to encourage and reward doctors by providing  
6 them with gifts. BMS directed its sales representatives to particularly target doctors who either wrote  
7 high numbers of prescriptions for patients enrolled with particular private health insurance companies  
8 or who were part of formulary committees or physician practice groups with high numbers of patients  
9 covered by private insurance. BMS sales representatives gave gifts, liquor, gift cards, and  
10 entertainment tickets to these doctors, and charged all of it as “direct marketing expenses” or “DME.”  
11 They also set up special events, such as samba dance nights and Pravachol Lakers basketball camp  
12 events, for physicians, specifically to encourage them to write more prescriptions of BMS drugs. This  
13 conduct was encouraged and condoned by BMS.  
14

15  
16        30. In 2001, Lucius Allen alone spent \$15,942.48 on DME expenses to promote Plavix. He spent  
17 \$9,301.30 in DME expenses to promote Glucovance.

18        31. In 1997, BMS held two Lakers “Dream Camps” for physicians in order to encourage them to  
19 prescribe Pravachol. The physicians were encouraged to bring family members to join them in getting  
20 some basketball pointers from famous Lakers such as Larry Drew, Reggie Theus, Byron Scott, Kurt  
21 Rambis, and Jamal Wilkes. Upon arriving at the Dream Camp, each physician received a purple  
22 basketball jersey emblazoned with the word “Pravachol” on it. BMS ordered 155 of these jerseys—  
23 paying \$2,194.44 for them. Over 100 people, namely high-prescribing physicians, their wives, and  
24 children attended the camp. BMS spent \$4,500 to cater the event and paid the Lakers players each at  
25 least \$2,000 to attend. BMS also took out a \$5,000,000 insurance policy for the program. In addition  
26 to enjoying good food, drinks, and training from famous LA Lakers, physicians also had balls and  
27  
28

1 photographs signed by the players. BMS delivered these photographs to the physicians after the event.  
2 One event was held in Culver City, CA, the other in Las Vegas, NV. Although CME was provided to  
3 the doctors about the "Safety and Efficacy of HMG Therapy," the letter physicians received to confirm  
4 their attendance at the event stated, "The Basketball Challenge will allow you to take your best shot at  
5 free throws, three point shooting, dribbling techniques and get tips from some of the NBA's  
6 superstars!" It made no mention of any CME or other medical-related activity at the event. Physicians  
7 were also told to "bring a cheerleader or two to root you on." The confirmation letter also explained  
8 that there would be "an opportunity for your fans to get autographs from some of the Lakers so bring  
9 your pens and whatever you want autographed."  
10

11 32. BMS also used its special access to the Lakers—namely through Lucius and Eve Allen—to  
12 provide tickets to games with physicians. BMS rented suites at Staples Centers, and held catered  
13 events for physicians at LA Lakers games. For example, in December 1999, BMS spent \$8,500 to rent  
14 two 20-person suites, and provide food, drinks, and parking for physicians at the Staples Center during  
15 a Lakers vs. Clippers game. BMS spent \$4,500 to rent one such suite at a game played in the same  
16 month at the Staples Center against the Detroit Pistons. In January 2000, BMS rented another luxury  
17 suite at the Staples Center for \$3,000. In March 2000, BMS spent another \$3,000 on another luxury  
18 suite at the Staples Center for a game between the Lakers and the Indiana Pacers. Between December  
19 1999 and at least April 2000, BMS rented a suite or suites at the Staples Center for the purpose of  
20 treating physicians to games and meals there at least once a month and often much more than that.  
21

22 33. In 2000, BMS presented to the sales representatives in Mr. Wilson's POD the 2000 Downtown  
23 LA Business Plan. The plan directed sales representatives to procure tickets for Los Angeles Lakers  
24 basketball games and Los Angeles Kings professional hockey games and provide them to physicians.  
25 Sales representatives were also encouraged to arrange golf outings for physicians. The stated purpose  
26 of such entertaining was to "increase Pravachol sales" among physicians, especially those in the "Top  
27  
28

1 5 Health Plans,” which included Blue Cross, Blue Shield, Health Net, and Pacificare.

2 34. In fact, it was routine practice at BMS to treat high prescribing physicians with tickets to Los  
3 Angeles Lakers games. These physicians were routinely invited to watch home games in a luxury  
4 suite, at BMS’ expense. Some doctors brought their wives and up to nine family members and friends  
5 at a time. Again, BMS covered these costs.  
6

7 35. In 2004 and 2005, BMS sales reps, with permission from management, held happy hours and  
8 other events with members of the L.A. Lakers basketball team. Although Mr. Wilson had left the  
9 company by then, he was invited to attend these events by BMS employees.

10 36. Upon information and belief, BMS continued to provide tickets to sporting events to physicians  
11 until at least 2006. The 2002 PhRMA Code, a pharmaceutical-industry document that is intended to  
12 provide self-regulation for pharmaceutical companies and lays out what types of sales practices are  
13 appropriate, makes clear that the “provision of entertainment/and or recreational activities, including  
14 entertainment at sporting events in connection with an educational or scientific presentation or  
15 discussion, is inconsistent with the Code.”  
16

17 37. A November 2000 “End of Millenium” Business Plan for the final month of 2000 for Lucius  
18 Allen indicates that in order to increase the prescription writing habits of Dr. J.K.<sup>3</sup> by 3 new  
19 prescriptions of Glucovance a day, Mr. Allen was to do a “1 on 1 Laker/Dinner” with Dr. J.K. before  
20 December 15th. Mr. Allen was also going to “gain commitment to switch patients to [Glucophage]  
21 XR.” Drs. A.A. and S.K. were also wooed by invitations to Lakers games.  
22

23 38. These invitations and attendance at the games were intended to encourage physicians to  
24 increase the number of BMS prescriptions they were writing, and in fact, it did.

25 39. BMS also encouraged its sales representatives to arrange expensive golf outings and other trips  
26

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27 <sup>3</sup> In order to protect physicians’ identities, only initials are provided. If the  
28 Court requires more specific information, the People and Relators can provide it  
in camera or under seal.

1 for high prescribing doctors. On or about March 2000, BMS paid approximately \$800 for a pre-paid  
2 all inclusive golf outing for Dr. M.C. and three of his friends at the Cascades Golf Club in Sylmar,  
3 California. Upon information and belief, BMS treated Dr. M.C. to this golf outing in return for him  
4 writing more Pravachol prescriptions. No sales representatives were in attendance during the day of  
5 golfing and there were no medical education programs or any other medical programming provided to  
6 the doctors.  
7

8 40. BMS also organized other types of events for physicians. For example, BMS organized events  
9 at Universal Studios for physicians and their families. Mr. Allen's Millennium Business Plan suggests  
10 that he was going to invite Dr. F.L. to "Universal Studios on a Saturday" in order get him to switch all  
11 of his patients to Glucophage XR. This was to be a family outing, as the doctor was reluctant to take  
12 time away from his family.  
13

14 41. BMS also organized "samba" dance events for Hispanic physicians. Notes in Mr. Allen's  
15 ADVANCE workbook, which tracked his progress as a sales representative while at BMS, explain that  
16 "the Hispanic community was targeted for a Glucovance Program which included 'Samba' dance  
17 lessons for the physicians." The programs were extremely successful. Notes in the ADVANCE  
18 workbook state, "Two programs were planned and implemented. Over 50 physicians and their dance  
19 partners attended the two programs. This event represented the start in the growth of Glucovance  
20 prescribing in the LA North territory."  
21

22 42. In November 1999, BMS purchased 60 dinner and concert tickets for "A Smooth Jazz  
23 Christmas" to provide to high-prescribing physicians. In December 1999, BMS purchased 70 tickets  
24 for the opening night of The Lion King at the Pantages Theatre on October 8, 2000 at a cost of over  
25 \$5,000 to provide to physicians. Later that month, BMS purchased 60 more tickets for The Lion King,  
26 at a cost of \$6,000, to provide to physicians.  
27

28 43. On or about May 2001, BMS sponsored a Medical Education Diabetes Program at Disneyland

1 for physicians at a cost of \$5,000.

2 44. On or about July 20, 2001, pursuant to instructions from BMS management, Mr. Wilson  
3 purchased 12 tickets to the Los Angeles Philharmonic for four doctors and their wives at a price of  
4 \$984.90. The purpose of this gift was noted as "Glucovance Pull Through," a sales effort directed at  
5 increasing prescriptions of the BMS diabetes drug and ensuring its placement on certain formularies.  
6 The physicians who received these tickets were all identified in other BMS documents as high volume  
7 prescribers.  
8

9 45. During approximately this same time period, BMS sales representatives were instructed to  
10 organize lavish lunches and drinks at a cigar shop owned by Dr. J.O.'s brother in order to encourage  
11 Dr. J.O. to write prescriptions for BMS products. The sales representatives in Mr. Wilson's POD  
12 spent in total approximately \$1200 on food, cognac and cigars. Their district manager at the time  
13 attended the lunches and approved the expense reports.  
14

15 46. On or about December 17, 2002, Mr. Wilson was ordered by his district business manager to  
16 buy Christmas gift baskets for 12 high prescribing and influential physicians, despite the fact that he  
17 complained that it would look inappropriate to give such gifts. Mr. Wilson eventually spent \$754.80  
18 on the 12 gift baskets.  
19

20 47. Based on similar instructions from BMS, in or about August 2001, Mr. Wilson bought \$122.14  
21 in liquor for high prescribing doctors and billed it to the BMS "Pravachol DME account." On or about  
22 January 23, 2002, Mr. Wilson bought liquor in the amount of \$34.04 for a high prescribing doctor.  
23 The receipt for the liquor was submitted for the "Pravachol DME account."

24 48. A BMS sales memo from on or about January 15, 2003 instructs BMS sales representatives to  
25 implement "Winter Blitz Days," targeting physicians who were high Pacificare prescribers in order to  
26 get them to increase their prescription writing volumes for Pravachol in order to regain market share  
27 with Pacificare. This project was heavily funded, providing a large budget to BMS sales  
28

1 representatives for lunches and tickets for sporting events such as Kings professional hockey games.

2 49. A 2003 California Pravachol Fortune Five Plan TalkPoint document prepared by BMS  
3 management instructs sales representatives to invest "direct marketing expense" funds on targeted  
4 Fortune Five "START" physicians. "START" physicians are those who have been targeted for sales  
5 work based on prescription volume. In particular, this program was designed to increase sales among  
6 the five largest insurers in California, including Blue Cross, Blue Shield, Health Net, and PacifiCare.  
7 The plan informed BMS sales representatives that they were being provided with added dinner and  
8 honorarium funds in order to get doctors with high patient populations enrolled in these plans to  
9 increase the volume of prescriptions for BMS drugs they were writing. BMS allocated \$15,000 to  
10 target doctors who were high Blue Cross prescription writers; \$32,000 to target doctors who were high  
11 Blue Shield prescribers; \$25,000 to target doctors who were high Health Net prescription writers; and  
12 \$20,000 to target doctors who were high PacifiCare prescribers.  
13  
14

15 50. In or about May 2004, BMS required Mr. Wilson to take responsibility for the "Health Care  
16 Partners Plavix 30/60/90 Day Action Plan," which entailed convincing members of a private insurance  
17 group to put Plavix on its formulary. As part of the plan, Mr. Wilson was instructed to provide  
18 payments and other incentives to members of the formulary committee of Health Care Partners to  
19 attend seminars and speaking programs.  
20

21 *4. Honoraria, Speaking Opportunities, Preceptorships, and other Monetary Incentives for  
22 High Prescribing Physicians*

23 51. BMS also sought to influence physicians to prescribe its products by giving them cash  
24 payments. BMS knew that these cash payments were illegal and violated anti-kickback laws. BMS  
25 was aware that its payments did not comply with the guidelines of the American Medical Association  
26 for payments to physicians or the PhRMA Code. BMS was also aware of the Inspector General's  
27 Special Fraud Alert, which raised particular concerns about drug marketing. In response to all of this,  
28 rather than curbing its kickback payments, BMS used elaborate schemes to conceal the nature of these

1 payments. Specifically, among other schemes, BMS used preceptorships, consultancies, district  
2 advisory boards, and "speaker's bureaus" to funnel money to high prescribing doctors.

3 52. These programs were used in conjunction with one another to achieve greater market share for  
4 BMS drugs. So, for example, in order to get endocrinologists to convert their patients from  
5 Glucophage, a drug that was no longer on patent, to Glucovance or Glucophage XR, patented BMS  
6 drugs, BMS employed a strategy that used roundtables, clinical advisory councils, "recruitment for  
7 National Programs (Drive-To or Fly-To Programs)," preceptorships, and one on one dinner  
8 presentations. BMS's "tactics" also included "targeting high volume NRX's [new prescriptions] and  
9 Opinion leaders" and providing "What BMS can do for approved physicians." The strategy also  
10 included developing physicians who were "opinion leaders." One requirement for these physicians  
11 was that they be "advocates of Metformin Franchise." In order to ascertain whether the multi-pronged  
12 strategy was working, BMS utilized tracking forms to track physicians' prescribing habits. BMS' goal  
13 in employing these tactics was to increase the "Metform Franchise's" sales growth by 10% from  
14 December 2000 to December 2001. Moreover, the focus of this strategy was on "conversions in  
15 Managed Care," such as Blue Cross, Merck-Medco, Prescription Solutions, and PacificCare, as well as  
16 on "key medical group conversions based upon managed care opportunities." In other words, BMS  
17 used many strategies to funnel cash payments to physicians in order to make them "champions" of  
18 BMS drugs.  
19  
20  
21

22 **a. Preceptorships**

23 53. Ostensibly, the point of a preceptorship program is to allow a sales representative to shadow a  
24 physician during her day to better understand her patient population or needs. However, BMS used  
25 preceptorships to channel money to physicians. BMS would pay physicians for preceptorships, but  
26 often the sales representative would not "shadow" the doctor for the day; rather, the representative  
27 would just hand over the check to the doctor. Even if the BMS representative did "shadow" the  
28



1 doctor, the doctor did not provide any valuable service to the representative. Rather, BMS was paying  
2 the doctor in order to have face-to-face access to her, to build rapport, and to get access to her patient  
3 files, in order to tag certain patients as being eligible for BMS drugs.

4 54. A 1999 tactical plan for "driv[ing] Glucophage first line formulary positioning groups market  
5 share to 40% by end of 1999" in a physician group included spending \$1,500 in the second and third  
6 quarters of 1999 on endocrinology mentorship/preceptorship programs."

7 55. Mr. Allen's ADVANCE workbook also shows that he set up a preceptorship with Dr. D.L., a  
8 P&T member at Glendale Memorial Hospital. The "P&T" committee is the pharmacy and therapeutics  
9 committee, and is in charge of deciding what drugs go on formulary at the hospital overseen by the  
10 committee. Dr. D.L.'s prescriptions for Pravachol eventually increased 25 percent.

11 56. BMS' 2000 Downtown plan calls for sales representatives to initiate "preceptorships with  
12 influential physicians" in order to "increase Avandia sales."

13 57. BMS' "ZAP Plan," which targeted physicians who were high prescribers of Zocor in order to  
14 switch them to prescribing Pravachol, listed as one item in the action plan for doing so, "set up  
15 Preceptorships with key lipid Clinics."

16 58. These preceptorships were often used as an opportunity to chart and flag patient files. In other  
17 words, during preceptorships physicians were encouraged to give BMS sales reps access to the  
18 physician's patient files so that the representative could review the files and "flag" those patients who  
19 had the profiles for certain BMS drugs.

#### 20 **b. Speaker's Bureaus**

21 59. BMS also founded a speaker's bureau as another method to make large and numerous  
22 payments to influential physicians who recommended BMS drugs at teleconferences, dinner meetings,  
23 consultant meetings, educational seminars and other events. These speakers repeatedly gave short  
24 presentations relating to BMS drugs for which they were paid anywhere from \$700 to \$2,500 per  
25  
26  
27  
28

1 event. BMS targeted opinion leader physicians, some of whom were high prescribers and some of  
2 whom were influential in their communities. The payments that these doctors received were far in  
3 excess of the fair value of the work they performed for BMS. Speakers who most zealously advocated  
4 BMS drugs were hired most frequently for speaking events, notwithstanding the fact that many of  
5 these events purported to be independent medical education seminars where independent information  
6 was supposed to be delivered. BMS used inclusion in the speakers bureau specifically as a way to  
7 court and cultivate physicians who would be loyal prescribers of (and boosters for) BMS drugs. BMS  
8 also thoroughly trained its speakers, providing them the message and the slides for speaking.

10 60. Thus, business plans for BMS representatives often mention as a "strategy" for boosting  
11 prescriptions making a physician a speaker for a certain drug. In order to get Dr. M.B. to write 1 more  
12 Glucovance prescription a day in the final quarter of 1999, Mr. Allen noted that he would get him  
13 "speaking opportunities." Dr. A. was "set . . . up as a speaker to Fp's [family practitioners] in Beverly  
14 Hills." In order to "gain commitment to quickly switch patients to XR," BMS wooed Dr. M. by  
15 developing him as "speaker potential" for Glucophage XR.

17 61. Lucius Allen's ADVANCE workbook shows that in order to get the physicians at Foothill  
18 Cardiology, "one of the largest and most influential Groups in Los Angeles County," Mr. Allen  
19 "developed an advocate in Dr. C. and developed him as a Plavix speaker." BMS then sponsored a  
20 program for the group at a "nice restaurant close to the Pasadena office" at which Dr. C. spoke about  
21 the importance of placing patients on Plavix. BMS reviewed Dr. C.'s talk prior to the event in order to  
22 ensure "we were all on the 'same page.'"

24 62. BMS paid Dr. M.C. \$1,000 to speak at a dinner program at a lavish restaurant called Ca'Brea  
25 in Los Angeles on or about October 16, 2002 regarding "The Management of Acute Coronary  
26 Syndrome." Dr. M.C. was considered a top prescriber by BMS, was on several targeted lists for drug  
27 promotions, received an expensive gift basket as a gift for Christmas in 2002, was on the  
28

1 Pharmaceuticals and Therapeutics Committee for St. Vincent's Hospital, and assisted in getting BMS  
2 drugs on the hospital formulary.

3 63. Dr. R.M. was paid \$2,500 to give a Plavix presentation at a lavish dinner at A.O.C. in Los  
4 Angeles in or about 2003. His slide show was provided to him by BMS' marketing department. BMS  
5 marketing items, such as Plavix napkins and notepads, were placed on the table. Doctors were told  
6 that they could bring their spouses. The total cost of food and liquor—completely paid for by BMS—  
7 was about \$4,500.  
8

9 **c. Clinical Advisory Councils**

10 64. BMS also funneled illegal payments to physicians to encourage them to prescribe BMS  
11 products by using "consultants" meetings. Pursuant to this scheme, BMS recruited physicians to  
12 dinners or conferences and paid them to hear presentations about BMS drugs. Under the guise that  
13 these doctors were acting as "consultants," BMS sometimes had the doctors sign sham "consulting  
14 agreements." However, the doctors never actually acted as consultants to or for BMS. Instead, at the  
15 consultants meetings, BMS would give physicians presentations related to BMS drugs, sometimes  
16 regarding off-label usage. The presentations would be made by BMS employees or physician speakers  
17 hired by BMS for the purpose of promoting BMS drugs. All attendees would be paid to be there.  
18

19 65. For example, at a "Community Roundtable Clinical Advisory Council" held in September  
20 2001, Lucius Allen spent over \$2,000 for a meal for three physicians—a speaker for BMS, and two of  
21 his colleagues. In addition to the meal, the speaker was paid \$750, while his colleagues were each  
22 paid \$100 to attend the "roundtable."  
23

24 66. BMS invited high prescribing physicians to attend a two-day program at a resort in La Jolla,  
25 California on or about June 29-30, 2002. BMS paid these physicians honoraria to attend educational  
26 seminars on the use of Pravachol in the diabetic population.  
27

28 67. On or about May 31, 2001, BMS organized a "Clinical Advisory Council" meeting at Nick &

1 Stef's Steakhouse. There, attendees were treated to a lavish meal, a \$250 honorarium each for  
2 attending, and were to listen to "new information related to cholesterol management and acute  
3 coronary syndromes." Physicians were anticipated to give "suggestions on sales training."

4  
5 68. Although physicians were not supposed to bring their spouses or guests to these events, the  
6 physicians frequently did so, and BMS always paid for the additional dinners. Moreover, although  
7 physicians were supposed to "advise" or "consult" with BMS employees at these dinner meetings,  
8 they frequently did not bother to fill out the questionnaires that were brought for them.

9  
10 69. Indeed, the BMS consultant meetings were not held for the purpose of providing BMS with  
11 expert, independent advice. In many cases, BMS employees filled out the "expert" questionnaires for  
12 the doctors after the doctor signed the signature line. Any data actually filled out on a questionnaire  
13 by a physician was turned over to BMS marketing to determine how to better sell drugs to that  
14 physician; it was not used as "independent expert advice" on scientific matters.

15  
16 70. As an example of how the consultant meetings were geared towards driving increased  
17 prescriptions, a May 16, 2003 memo regarding a two-day BMS event at a resort hotel in Santa Barbara  
18 is enlightening. The memo instructs sales representatives to invite top prescribers in their area to the  
19 June 21-22 event, which was being held at a \$350-a -night hotel. Physicians would get a \$250  
20 honorarium to attend, plus meals and the hotel stay. BMS' instructions to its sales representatives state,  
21 "As you know, physicians that attend these types of programs come back very motivated to prescribe  
22 Pravachol."

23  
24 71. In fact, BMS routinely analyzed whether the "consultants" meetings were successful in getting  
25 attendees to change their prescription writing practices. Physicians at BMS dinner and resort meetings  
26 were asked to write more BMS drug prescriptions. BMS marketing and management routinely tracked  
27 the prescription patterns of physicians who attended their dinners and meetings. For example, in  
28 October 2003, BMS created a report entitled "Health Net High Volume," which tracked the

1 prescribing patterns of physicians who prescribed a high volume of Pravachol and other drugs in its  
2 class over a three-month period.

3 72. Physicians were made aware by sales representatives that they would not continue to be invited  
4 to lavish dinners and resort weekends if they did not remain in the high prescriber range, and if they  
5 did not prescribe BMS drugs. Physicians who did not continue to prescribe BMS drugs were tracked  
6 on a weekly basis by BMS marketing and sales personnel, and were sometimes penalized by being  
7 taken off target lists for invitations to future dinners and resort weekends.

9 **d. Other Dinner Events**

10 73. In addition to clinical advisory council meetings and roundtables, BMS also sponsored lavish  
11 meals with physicians to encourage them to prescribe BMS products. For example, in or about May  
12 2001, BMS held a Jazz Brunch for physicians at Chaya Brasserie in Los Angeles, California. The  
13 brunch cost \$10,500, including \$6,700 for meal expenses alone. About 30 physicians attended the  
14 event.  
15

16 **e. Lunch and Learns**

17 74. In addition to the programs already discussed, BMS also sponsored "lunch and learns"—lunch  
18 programs for physicians about BMS drugs. The speaker was usually a physician considered a key  
19 opinion leader who had been groomed by BMS through the speaker's bureau and would provide a  
20 presentation with slides created by BMS.  
21

22 75. One such program was put on by BMS in September 1999 to promote the use of Cefzil to the  
23 M.F.H. medical group, which reportedly provided medical care for 500,000 Southern California  
24 "managed care lives." The group's top health plans were PacifiCare/Secure Horizons, HealthNet and  
25 Blue Cross/California care. BMS invested \$10,800 in the program, which included a \$2500  
26 honorarium for the speaker and 400 lunches for the physicians of M.F.H. The "ROI" for BMS  
27 included "access to closed clinics," "favorable positioning of Cefzil/Opportunity for Tequin," and  
28

1 "BMS field follow-up to drive market share."

2 **f. Detailing**

3 76. Another scheme employed by BMS to funnel monetary payments to high prescribing  
4 physicians consisted of remuneration for "detailing." Under this scheme, BMS would provide  
5 physicians gift certificates to online medical supply stores or direct cash payments of up to \$500 to  
6 watch a sales representative flip through a book of promotional drug "visuals." Supposedly, the sales  
7 representative was to elicit "feedback" on the quality of the presentation. However, in reality, no data  
8 was gathered or analyzed, and the entire purpose of the activity was to pay the physician in order to  
9 increase drug prescriptions.  
10

11  
12 **5. Regional and National Events for High Prescribing Physicians**

13 77. In addition to providing physicians with lavish dinners at consultants meetings and speaking  
14 events, BMS also sought to influence physicians' prescription-writing practices by inviting doctors to  
15 weekend resort events, known as "drive tos" or "fly tos." Only high prescribing doctors were invited  
16 to such events.

17 78. For example, an August 1998 BMS document called "Sales Rep Tactical Steps for Conversion  
18 Success," instructs BMS sales representative to target Blue Cross physicians for drive-to symposiums  
19 at posh resorts.  
20

21 79. Similarly, on or about May 31, 2001, BMS organized an educational symposium on advances  
22 in diabetes care for endocrinologists at the Westin Rio Mar Beach Hotel in Puerto Rico. BMS paid for  
23 travel and accommodation of all attending endocrinologists and their spouses. In fact, BMS provided  
24 that "all attendees and one of their guests are entitled to one recreational activity during the course of  
25 the meeting." These activities included golf, tennis, deep sea fishing, Swedish massage, rain forest  
26 trip, discover San Juan/Shopping trip, sailing/snorkeling, manicure/pedicure, and river kayaking.  
27

28 80. On or about June 28, 2002, BMS organized a San Diego Regional Consultant Conference, at

1 which attendees got a free night's stay at a hotel, paid dinners, a \$250 honorarium check, and could  
2 bring their spouses. BMS assigned its sales representatives the names of physicians to invite, and were  
3 told that the names were based on prescription volume. BMS told its sales representatives that only  
4 those doctors on the list provided by BMS would be allowed to attend the event. These physicians  
5 were required to sign a consultant agreement and fill out a market research questionnaire while at the  
6 meeting.  
7

8 81. BMS 2003 California Pravachol Fortune Five Plan indicates that Orange County was to have a  
9 drive-to resort stay for doctors on April 26, 2003 at Huntington Beach, with 200 attendees. San  
10 Francisco/San Jose was to schedule a "National Consultants Conference" on March 30, 2003, and  
11 there was also a drive-to resort stay for doctors in Napa Valley that was to be scheduled. Again, this  
12 Fortune Five Plan was meant to increase sales among the five largest California insurers, including  
13 Blue Cross, Blue Shield, Health Net, and Pacificare.  
14

15 82. BMS organized many of these types of events for high prescribing doctors. On or about May  
16 22, 2003, BMS organized a continuing medical education program on lipid lowering management in  
17 New Orleans, entitled "From Benchtop to Bedside." BMS flew physicians to this program, provided  
18 them with hotel accommodations and meals and honoraria to attend.  
19

20 83. On or about June 21-22, 2003, BMS organized a "drive-to" event for physicians at the Bacara  
21 Resort in Santa Barbara. BMS paid \$350/night for each physician to stay at the resort, paid each  
22 attending physician a \$250 honorarium, and provided paid meals. Attending physicians were allowed  
23 to bring a guest, who was also fully paid for by BMS. BMS told its sales representatives that the event  
24 would "motivate" physicians to "prescribe Pravachol." BMS instructed sales representatives that only  
25 targeted physicians would be invited, and that the criteria for choosing these physicians was based on  
26 Pravachol prescription volume and overall drug class volume. The target invitation list included a  
27 large number of downtown Los Angeles very high prescribers.  
28

1                   **6. Grants to Physicians as Inducement to Prescribe BMS Drugs**

2                   84. BMS also paid outright grants to physicians to promote and prescribe BMS' drug products.  
3  
4                   For example, in 1999-2000, BMS paid a \$200,000 educational grant to Dr. N.L.'s Foundation. In  
5                   exchange, Dr. N.L. used his influence on the Cedars-Sinai Medical Center Pharmaceuticals and  
6                   Therapeutics Committee to get BMS drugs on the Cedars-Sinai formulary. This meant that BMS  
7                   would receive a large boost in prescriptions from this very active hospital.

8                   85. Around 2001, at the time of the Glucovance blood sugar control drug launch, BMS made a  
9                   \$3,000 educational grant to Dr. Y.L. for his medical website. This grant was given to Dr. Y.L. for the  
10                  purpose of influencing him to write a high volume of prescriptions of Glucovance at the time of  
11                  launch.  
12

13                86. BMS' purpose in encouraging Dr. Y.L. to write Glucovance prescriptions was to ensure that  
14                Glucovance would be put on the formularies of the California's top private health insurance  
15                companies. Upon information and belief, BMS paid kickbacks to doctors during the critical six-month  
16                period following a drug launch in order to ensure the drug's placement on important formularies.  
17

18                87. BMS also made smaller "educational grants" to physicians to encourage their loyalty to BMS  
19                products. For example, in March 2001, BMS provided Dr. A.A. a \$500 grant for "Armenian language  
20                medical education." Later that year, in July 2001, BMS provided Dr. A.A. a \$500 "grant" for  
21                "medical education television." That same month, BMS gave Dr. S.U. a \$250 "educational grant" for  
22                "medical education patient education materials." In September 2001, BMS paid Dr. M.B. a \$625 grant  
23                for "medical education programs directed toward the Los Angeles Jewish population." That same  
24                month, BMS funneled another \$300 to Dr. A.A. as an "educational grant" for his television show:  
25

26                   **7. BMS' Payment of Kickbacks to Influence Formulary Decisions**

27                88. As has been explained, BMS not only used kickbacks to influence the prescription-writing  
28                habits of physicians, but it also used kickbacks to influence formulary decisions. For example, on or



1 about June 23, 2000, BMS presented to its sales representatives the California Project G.A.P.  
2 Glucovance Accelerated Plan, which called for targeting physician members of the formulary  
3 committees at community hospitals.

4 89. In or about October 2002, BMS paid Dr. M.C. \$1,000 to speak at a dinner program at a lavish  
5 restaurant called Ca'Brea in Los Angeles. Dr. M.C. was considered a top prescriber by BMS, was on  
6 several targeted lists for drug promotions, received an expensive gift basket as a gift for Christmas in  
7 2002, was on the Pharmaceuticals and Therapeutics Committee for St. Vincent's Hospital, and assisted  
8 in getting BMS drugs on the hospital formulary.

9 90. Another doctor that BMS sought to influence with kickbacks was Dr. N.L. Dr. N.L. served on  
10 the Pharmaceuticals & Therapeutics Committee of Cedars-Sinai Medical Center, the largest nonprofit  
11 hospital in the Western United States. The Pharmaceuticals & Therapeutics Committee decided which  
12 drugs would appear on the formulary of Cedars-Sinai. As set forth above, in 1999-2000, BMS gave  
13 Dr. N.L. a \$200,000 educational grant for his Save the Heart Foundation. In 2002, BMS sent Dr. N.L.  
14 an expensive gift basket, which was written off as a BMS direct marketing expense. Mr. Wilson also  
15 procured several gift cards for "Cedars-Sinai Hospital," all of which were considered BMS direct  
16 marketing expenses. For example, in December 2000, Mr. Wilson purchased \$200 worth of gift cards  
17 from Borders bookstore for Cedars-Sinai hospital. A receipt from January 19, 2001 shows Mr. Wilson  
18 purchased \$100 in gift cards from Borders bookstore for Cedars-Sinai Hospital. Another receipt from  
19 April 5, 2002 shows a similar expense of \$200 on gift cards from Borders books for Cedars-Sinai  
20 hospital. On or around January 23, 2002, Mr. Wilson also purchased Starbucks gift cards for  
21 physicians, including Dr. N.L. at Cedars-Sinai hospital. Dr. N.L. also served as a habitual BMS  
22 speaker for Avapro and Plavix and was paid honoraria for these services.

23 91. Upon information and belief, in exchange for these gifts and payments, Dr. N.L. used his  
24 influence on the Cedars-Sinai Medical Center Pharmaceuticals and Therapeutics Committee to get  
25  
26  
27  
28

1 BMS drugs on the Cedars-Sinai formulary. This meant that BMS would receive a large boost in  
2 prescriptions from this very active hospital.

3 92. In or about May 2004, BMS required Mr. Wilson to take responsibility for the "Health Care  
4 Partners Plavix 30/60/90 Day Action Plan," which entailed convincing members of a private insurance  
5 group to put Plavix on its formulary. As part of the plan, Mr. Wilson was instructed to provide  
6 payments and other incentives to members of the formulary committee of Health Care Partners to  
7 attend seminars and speaking programs.  
8

9 93. BMS also directed its sales representatives to give gifts, lavish dinners, entertainment and cash  
10 payments (through speaker's bureaus, clinical advisory councils, preceptorships, and grants) to  
11 physicians in order to gain their agreement to write prescriptions for drugs that were not on approved  
12 formularies. Physicians were asked, in return for these dinners, gifts, entertainment and cash, to submit  
13 TARs (Treatment Authorization Requests) and PARs (prior authorization requests) for BMS drugs that  
14 were not on the formularies of private health insurance companies and to write prescriptions  
15 accompanied by a "dispense as written" note to the pharmacist in order to get the prescriptions filled  
16 despite not being on the formularies.  
17

18 94. BMS management directed sales representatives to create a false impression of drug popularity  
19 to private health insurance companies in order to get BMS drugs on these companies' formularies.  
20 BMS targeted select, high volume prescribers with gifts, cash, lavish dinners and entertainment in  
21 order to get them to write a large number of TARs and PARS for drugs that were not yet on the  
22 formularies. BMS management knew that private health insurance companies tracked the number of  
23 TARs/PARs and viewed these as a sign that new drugs were becoming popular among their  
24 physicians. BMS also knew that private health insurance companies would often put drugs with large  
25 enough numbers of TARs/PARs onto their formularies. By paying these kickbacks to influence the  
26 number of TARs/PARs written, BMS attempted to manipulate private health insurance formularies so  
27  
28

1 that more BMS drugs would be prescribed and paid for by insurance companies.

2 95. BMS management directed sales representatives to give influential physicians gifts, cash,  
3 lavish dinners, entertainment, and payments as consultants or through speaker's bureaus in order to  
4 influence the discharge orders put in place at large hospitals or in large physician groups. For  
5 example, in about October or November 2002, Lucius Allen took Dr. A.H. and her husband out for  
6 dinner. Dr. A.H. was a hospitalist at Huntington memorial hospital and her husband, Dr. J.H., was the  
7 Director of Health Care Partners. At dinner, Mr. Allen convinced these physicians to make changes to  
8 the discharge orders in their groups to provide a longer length of therapy on Plavix for post-stent  
9 patients. In about April 2003, Mr. Allen hosted a dinner at Spago's Restaurant in Los Angeles to  
10 encourage Health Care Partners to put in place patient discharge checklists that would require that  
11 certain patients be put on BMS drugs. As part of this "deal," the main players, all physicians who  
12 were part of the Health Care Partners group, were promised that they would be put on BMS' speakers  
13 bureaus and "they will be paid honorariums by BMS for every training talk they give."

16 96. BMS management directed sales representatives to give physicians gifts, cash, lavish dinners,  
17 entertainment, and payments as consultants or through speaker's bureaus, in order to keep BMS drug  
18 prescriptions at a high enough volume to maintain them on formularies once the formulary status had  
19 been obtained. This was called "pull through." BMS management also directed sales representatives  
20 to provide physicians with gifts, cash, lavish dinners and entertainment in order to keep BMS drugs  
21 high on the formulary "tiers" of drugs that may be prescribed, or to move them up to a higher "tier"  
22 based on volume of drugs prescribed. The higher the tier, the more likely a drug is to be prescribed as  
23 a first-line treatment on that formulary.

#### 25 **8. BMS Paid Kickbacks to Pharmacists**

26 97. In addition to paying kickbacks to physicians, BMS also paid kickbacks to pharmacists to  
27 ensure that pharmacists filled prescriptions with BMS products—rather than generic equivalents—and  
28

1 put through TARs and PARs to help get BMS products on formularies. BMS provided gift cards and  
2 other items of value to pharmacists. BMS also invited pharmacists to fancy dinners and other events.

3 98. For example, in about May 2004, BMS held a dinner for pharmacists in order to discuss  
4 extended patient therapy for individuals with ACS on Plavix. On or about June 22, 2004 BMS invited  
5 pharmacists and pharmacy staff to an event at the Peninsula Hotel in Beverly Hills. BMS often paid  
6 pharmacists honoraria to attend such events, just as it paid physicians.

7  
8 99. BMS also tracked each pharmacy's sales to ensure that the kickbacks it paid to physicians and  
9 pharmacists had their intended effect. BMS provided its sales reps with "Outlet Performance  
10 Scorecards" that showed the growth in sales of BMS products in each pharmacy they targeted with  
11 kickbacks.

12  
13 ***9. BMS' Kickback Practices Continued Long After the Official Suspension of the  
ADVANCE Program***

14 100. On or about July 28, 2003, due to concerns about HHS OIG compliance, BMS sent a  
15 memo to all sales personnel suspending what it called its ADVANCE program—the program that  
16 encouraged and rewarded the successes of sales representatives who had increased BMS market share  
17 by using preceptorships, clinical advisory councils, and all grant requests originating from marketing.  
18 Despite this memo, management continued to direct sales representatives to target high prescribing  
19 doctors by using preceptorship, paid dinners, and honoraria. For example, in or about March 2004,  
20 Mr. Wilson's district business manager directed him to set up a lavish dinner for pharmacists to  
21 promote Plavix as an off-label replacement for Pletal in the treatment of numbing and tingling  
22 associated with PAD. Mr. Wilson set up the dinner on or about June 8, 2004 at a lavish Los Angeles  
23 restaurant called Katana. Moreover, a BMS 2004 Plavix Business Plan for Santa Monica instructs  
24 sales representatives to take endocrinologists and internists to a roundtable dinner. A Pravachol 2004  
25 POD Business Plan documents includes instructions to "[i]ncrease focus on Blue Cross and Pacificare  
26 VH [very high prescribing] physicians with speaker programs and roundtables," and to conduct  
27  
28

1 pharmacy association dinners for pharmacists.

2 101. A June 2004 BMS document entitled "Current Market Share Growth" lists five planned  
3 dinners for physicians. Another document that was part of a 2004 business plan and was entitled  
4 "DME Review," shows that from March-July 2004, BMS held four roundtables to promote Pravachol  
5 to physicians who had large numbers of patients whose prescriptions were paid for by private  
6 insurance companies. Five more of these roundtables were planned for the rest of the year. A June  
7 2004 Plavix Business Plan shows that dinner programs were planned with "key speakers." The same  
8 document instructs, "Track NRx data; know who is writing and who is not writing."

9  
10 102. A powerpoint presentation given at a District Meeting in March 2004 shows that in  
11 response to a Pravachol study, BMS was instructing its sales reps to engage in a 19-day "blitz" that  
12 included \$1 million in additional monetary support (to "support your activity") just for the district and  
13 400 "new promotional medical education" programs for physicians.

14  
15 103. In about April 2004, BMS held a luncheon for the physicians at Health Care Partners, a  
16 physicians group with a large population of managed-care patients.

17 104. In about May 2004, BMS held a dinner for pharmacists in order to discuss extended  
18 patient therapy for individuals with ACS on Plavix. Another pharmacist dinner was scheduled for  
19 June 2004 at The Peninsula Hotel in Beverly Hills.

20  
21 105. BMS also scheduled a dinner on Plavix for PAD with Dr. R.I. that was set to take place  
22 in about June 2004 at Katana restaurant. Although Dr. R.I. did not end up speaking at the event, he  
23 still received his \$2500 honorarium. BMS also held a dinner in early June for physicians in order to  
24 increase Pravachol market share. The dinner included guest speaker Dr. R.W., and was held at The  
25 Palm Restaurant in Los Angeles.

26 106. BMS continued to provide this type of programming, funneling money to physicians in  
27 order to encourage them to prescribe BMS drugs, well after Mr. Wilson left BMS in late 2004. Upon  
28

1 information and belief, these practices continued until at least 2006, and some of them continue today.  
2 In or about January 2011, BMS provided a lunch without any educational component to Dr. J.S. at  
3 Cedars-Sinai. BMS continues to invite physicians to dinners with key opinion leaders, including Dr.  
4 N.L. and pays honoraria to physicians to give set speeches at such dinners.

5  
6 ***10. BMS Monitored the Effect of Its Kickback Scheme and Expected Quid Pro Quo from Doctors***

7 107. BMS specifically used the kickback schemes detailed above to induce doctors to write  
8 prescriptions for BMS products and to reward them for doing so. BMS elicited from doctors  
9 assurances that they would increase their prescription-writing in exchange for the gifts and payments  
10 detailed above. BMS tracked the prescription-writing habits of its physicians on a monthly basis.  
11 BMS marketing and sales strategy documents show that at least on a monthly basis, and often on a  
12 weekly basis, BMS tracked prescription volume by physician, tracked each physician's percentage of  
13 prescriptions by private insurance company, and tracked the percentage change in the prescribing  
14 habits of physicians. These documents show that physicians actually wrote prescriptions and that  
15 these prescriptions were influenced by kickbacks.  
16

17  
18 108. A BMS sales plan called "Rounding up the Docs!" instructs BMS sales representatives  
19 at dinner events to "Gain commitment to prescribe in specific patient types!" It goes on to direct them  
20 to "monitor Weekly NRx [number of new prescriptions, by doctor] reports and Weekly Prescriber  
21 Reports to evaluate the success of the program," and then "Hold customers accountable." By "hold  
22 customers accountable," BMS meant that if the physician did not increase her prescriptions, the sales  
23 representative was to warn her that she would no longer receive samples, and that the sales  
24 representative would reduce the number of gifts to the physician and would reduce or cut out  
25 invitations to dinner events, fly-to resort events, and other perquisites. BMS sometimes referred to  
26 these tactics as "shaking the doctors down." Sales representatives were told specifically to ask  
27 physicians, "We've done all these things for you – why aren't we getting your business?"  
28

1 109. Similarly, in or about July 2003, BMS distributed data to California sales  
2 representatives on the market share of their new drug prescriptions and total prescriptions for the  
3 second quarter of 2003. This data showed market share across the "Fortune Five" insurance plans,  
4 including Blue Cross, Blue Shield, Health Net, and Pacificare. BMS sales representatives were  
5 expected to use this information to determine the best doctors to target for sales pitches, gift cards,  
6 liquor, invitations to lavish dinners and expensive hotel stays, and tickets to sporting events and  
7 concerts.

9 110. A BMS 2004 Plavix Business Plan for Santa Monica instructs sales representatives to  
10 track new prescription-writing data. It tells sales representatives to "know who is writing and who is  
11 not writing."

12 111. The physicians targeted by BMS actually wrote prescriptions and submitted them to the  
13 private insurance companies named throughout this Complaint as a result of kickbacks BMS provided  
14 to them. Moreover, because of BMS' provision of kickbacks, certain BMS drugs were placed on  
15 managed care formularies or were automatically ordered for certain patients due to discharge  
16 checklists and orders. The placement of BMS drugs on formulary and the institution of discharge  
17 checklists led to higher numbers of BMS drugs being prescribed and covered by private insurance  
18 companies.  
19

#### 20 ***11. BMS' Kickback Scheme Was Illegal and Violated California Law***

21 112. Cal. Bus. & Prof. Code § 650 is a critical provision of the California Code. Compliance  
22 with it is material to the way in which private insurance companies treat claims for reimbursement. In  
23 other words, had the private insurance companies known that physicians wrote prescriptions for BMS  
24 drugs because the physicians had been paid kickbacks by BMS to do so, the insurance companies  
25 would not have provided reimbursement for these prescriptions. To do so would put the insurance  
26 companies in the position of funding illegal kickbacks after the fact.  
27  
28

1 113. Moreover, the kickbacks described in this complaint are strictly illegal and have had the  
2 direct effect of greatly increasing the amount of Abilify, Avapro, BuSpar, Cefzil, Glucophage,  
3 Glucovance, Monopril, Plavix, Pravachol, Praviguard, Serzone, and Tequin prescriptions and the  
4 indirect effect of increasing the amount of money spent by private health insurance companies for  
5 reimbursement of prescriptions covered by these insurers. The payment of these kickbacks represents  
6 the inducement of claims for payment of a health care benefit through a pattern of fraudulent conduct  
7 and constitutes false claims within the meaning of Cal. Penal Code § 550(6).

9 114. Mr. Wilson did not become aware that BMS' conduct was fraudulent and illegal until at  
10 least about April 2004, when he filed a Wrongful Termination lawsuit in Los Angeles, LA. Mr. and  
11 Mrs. Allen did not become aware that BMS' conduct was fraudulent until about sometime in 2009.  
12 Although Mr. Wilson and Mr. and Mrs. Allen provided kickbacks to physicians when they were  
13 employed at BMS at the behest of the company, BMS led them to believe, while they were at the  
14 company, that this conduct was legal and proper. Indeed, BMS made misrepresentations to Mr.  
15 Wilson, Mr. and Mrs. Allen, and its sales representatives at local, regional, and national training  
16 meetings, suggesting that its programs were proper and in compliance with the law. Such statements  
17 were false and misleading, and were meant to fraudulently conceal the true nature of BMS' practices.  
18 Thus, none of the Relators can be faulted for failing to discover sooner that BMS' course of conduct  
19 violated 1871.7.  
20  
21

## 22 ***12. BMS Used Third Party Vendors to Conceal Its Fraudulent Scheme***

23 115. In order to conceal the fact that it was paying physicians to write prescriptions, BMS  
24 used third-party vendors to set up events, plan travel for physicians, and issue checks to physicians.  
25 BMS employed companies such as Cogenix, LLC, Clinical Insights, Inc., BLP Group Companies,  
26 Advanced Health Media, Inc., Phoenix Marketing Solutions, Deborah Wood & Associates, and  
27 Centricity/Cardinal Health to organize and arrange its medical education and speaking programs.  
28



1 BMS also employed Boron Lepore & Associates and McGettigan Partners to organize physician  
2 events. For example, BMS employed Boron Lepore to purchase Lakers tickets, tickets to the theater,  
3 and other tickets for other events that BMS provided to physicians in order to induce them to write  
4 more prescriptions. BMS employed McGettigan Partners to arrange travel for physicians.  
5

6 116. BMS instructed its sales reps to use the "MERCi" system to set up "marketing-funded  
7 events." MERCi was a computer-based program that helped sales reps set up marketing programs.  
8 The system Reference Guide indicates that as late as December 31, 2004, BMS was setting up dinner  
9 programs, "Lunch and Learns," and "Peer-to-Peer" programs for physicians, nurses, and pharmacists.  
10 "Peer-to-peer" programs were "lectures during dinner led by BMS signed speaker." In other words,  
11 for these programs, BMS paid a physician an honorarium to give a packaged speech to other  
12 physicians who were treated to dinner. All speakers had to be "approved BMS signed speakers."  
13 "Lunch and learns" included "[s]haring the approved promotional message within a physician's office  
14 with food and beverage." BMS used Centricity and Phoenix Marketing Systems as the "logistics  
15 suppliers" for these programs in order to hide its efforts to use meals, honoraria, and other  
16 inducements to encourage physicians to write more prescriptions for BMS products.  
17  
18

19 **B. Physicians Actually Wrote and Submitted Prescriptions for Payment that Were Influenced**  
20 **by Kickbacks**

21 117. BMS tracked the prescription-writing practices of high-prescribing doctors and clearly  
22 believed that BMS' efforts to induce these doctors to write prescriptions worked. The tracking  
23 documents show that physicians wrote prescriptions for their clients and that the prescriptions were  
24 influenced by kickbacks.. Moreover, upon information and belief, these prescriptions were actually  
25 billed to private health insurance companies. Thus, BMS' pattern and practice of providing kickbacks  
26 to physicians to write prescriptions actually led to the submission of false claims for payment of health  
27 care benefits.  
28

1        118.        For example, in March 2002, BMS invited Dr. M.A. to a BMS dinner and paid him an  
2        honorarium to attend. Thereafter, between April and June 2002, Dr. M.A. wrote 330 new statin  
3        prescriptions, 29 percent of which were for Pravachol. In the same period he wrote 54 new anti-  
4        platelet prescriptions, 44 percent of which were for Plavix. Upon information and belief, Dr. M.A.  
5        was influenced to write these prescriptions because of kickbacks provided to him by BMS. At least  
6        some of the prescriptions written by this physician were paid for by private insurance companies.  
7

8        119.        In or around May 2001 BMS invited Dr. S.B. to a lavish dinner and/or resort stay and  
9        paid him an honorarium for attending. Thereafter, between July and September 2001, Dr. S.B. wrote  
10       235 new anti-platelet prescriptions, 86 percent of which were for Plavix. Between October and  
11       December 2001, Dr. S.B. wrote 296 new anti-platelet prescriptions, 93 percent of which were for  
12       Plavix. In or around June 2003, BMS invited Dr. S.B. to another event and paid him an honorarium to  
13       attend. Between August and October 2003, Dr. S.B. wrote 437 new anti-platelet prescriptions, 94  
14       percent of which were for Plavix. Upon information and belief, Dr. S.B. was influenced to write these  
15       prescriptions because of kickbacks provided to him by BMS. At least some of the prescriptions  
16       written by this physician were paid for by private insurance companies.  
17

18       120.        In or around April 2002, BMS paid honoraria to Dr. M.C. for preceptorships.  
19       Thereafter, between April and June 2002, Dr. M.C. wrote 202 new anti-platelet prescriptions, 86  
20       percent of which were for Plavix. In or around May 2003, BMS sales representatives paid for \$148.43  
21       in lunch expenses for Dr. M.C.'s office. Between February and April 2004, Dr. M.C. wrote 74 new  
22       anti-platelet prescriptions, 82 percent of which were for Plavix. Between May 7, 2004 and August 20,  
23       2004, BMS tracked Dr. M.C.'s prescriptions by the week. In total, during that time period, he wrote  
24       approximately 60 new prescriptions for Pravachol. Upon information and belief, Dr. M.C. was  
25       influenced to write these prescriptions because of kickbacks provided to him by BMS. At least some  
26       of the prescriptions written by this physician were paid for by private insurance companies.  
27  
28

1       121.       In or around October 2002, Dr. M.C. (different from the previous physician) was paid  
2 \$1000 by BMS to speak at a lavish dinner. That same year, BMS sent her an expensive gift basket for  
3 Christmas. Therafter, between April and August 2003, Dr. M.C. wrote 17 new prescriptions of  
4 Pravachol. Between August and October 2003, she wrote 17 new anti-platelet prescriptions, 94  
5 percent of which were for Plavix. Upon information and belief, Dr. M.C. was influenced to write  
6 these prescriptions because of kickbacks provided to her by BMS. At least some of the prescriptions  
7 written by this physician were paid for by private insurance companies..  
8

9       122.       BMS invited Dr. J.C. to a lavish dinner and resort stay and paid him honoraria for  
10 attending in or about June 2002. In the same month, Dr. J.C. wrote 16 new anti-platelet prescriptions,  
11 88 percent of which were for Plavix, and 94 new statin prescriptions, 18 percent of which were for  
12 Pravachol. BMS invited Dr. J.C. to another event and paid him an honorarium to attend in or around  
13 June 2003. Prior to the event, Dr. J.C. was writing an average of 3 prescriptions for Pravachol a week.  
14 After the event, he was writing an average of 4 prescriptions a week for Pravachol. Between August  
15 and October 2003, Dr. J.C. wrote 103 new anti-platelet prescriptions, 95 percent of which were for  
16 Plavix. From May to August 2004, Dr. J.C. wrote 33 new prescriptions for Pravachol and 93 new  
17 prescriptions for Plavix. Upon information and belief, Dr. J.C. was influenced to write these  
18 prescriptions because of kickbacks provided to him by BMS. At least some of the prescriptions  
19 written by this physician were paid for by private insurance companies.  
20  
21

22       123.       BMS tracked the prescription-writing practices of Dr. K.H. for the months of January  
23 through March 2002. In that time period, he wrote 22 new anti-platelet prescriptions, all of which  
24 were for Plavix. Upon information and belief, Dr. K.H. was influenced to write these prescriptions  
25 because of kickbacks provided to him by BMS. At least some of the prescriptions written by this  
26 physician were paid for by private insurance companies.  
27

28       124.       In February 2001, BMS tracked Dr. M.H. as writing 49 new prescriptions for

1 Glucophage within a three-month period. Between July and September 2001, Dr. M.H. wrote 107 new  
2 anti-platelet prescriptions, 86 percent of which were for Plavix. Between October and December 2001,  
3 Dr. M.H. wrote 148 new anti-platelet prescriptions, 86 percent of which were for Plavix. Between  
4 April and June 2002, he wrote 158 new anti-platelet prescriptions, 89 percent of which were for  
5 Plavix. Between August and October 2003, he wrote 111 new anti-platelet prescriptions, 93 percent of  
6 which were for Plavix. Between April and August 2003, Dr. M.H. wrote about 78 new prescriptions  
7 for Pravachol. Dr. M.H. continued to write prescriptions for Plavix and Pravachol in 2004. Upon  
8 information and belief, Dr. M.H. was influenced to write these prescriptions because of kickbacks  
9 provided to him by BMS. At least some of the prescriptions written by this physician were paid for by  
10 private insurance companies.  
11

12 125. In or about December 2000, BMS invited Dr. A.I. to an event and paid her an  
13 honorarium for attending. In February 2001, BMS tracked Dr. A.I. as writing 35 new prescriptions for  
14 Glucophage over a three-month period. BMS again invited Dr. A.I. to lavish dinners and resort events  
15 in May 2001, November 2001 and March 2002 and paid her honoraria to attend. Between April and  
16 June 2002, she wrote 93 new statin prescriptions, 24 percent of which were for Pravachol. In the same  
17 time period Dr. A.I. wrote 10 new anti-platelet prescriptions, all of which were for Plavix. Upon  
18 information and belief, Dr. A.I. was influenced to write these prescriptions because of kickbacks given  
19 to her by BMS. At least some of the prescriptions written by this physician were paid for by private  
20 insurance companies.  
21

22 126. In or about November 1999, December 1999, August 2000, September 2000, October  
23 2000, December 2000, January 2001, October 2001, November 2001, December 2001 and January  
24 2002, BMS sales representatives used marketing funds to purchase liquor for Dr. J.J.. In February  
25 2001, BMS tracked Dr. J.J. as writing 30 prescriptions for Glucophage over a three-month period.  
26 From July to December 2001, Dr. J.J. wrote 22 new anti-platelet prescriptions, all of which were for  
27  
28

1 Plavix. From October to December 2001, he wrote 59 new anti-platelet prescriptions, 92 percent of  
2 which were for Plavix. From August to October 2003, he wrote 344 new anti-platelet prescriptions, 93  
3 percent of which were for Plavix. From February through April of 2004, Dr. J.J. wrote 380 new anti-  
4 platelet prescriptions, 92 percent of which were for Plavix. Between May and August 2004, Dr. J.J.  
5 wrote 9 prescriptions for Pravachol and 425 prescriptions of Plavix, at an average of about 27  
6 prescriptions a week for Plavix. Upon information and belief, Dr. J.J. was influenced to write these  
7 prescriptions because of kickbacks provided to him by BMS. At least some of the prescriptions  
8 written by this physician were paid for by private insurance companies.  
9

10 127. In or about June 2003, BMS invited Dr. H.P.K. to attend a lavish dinner and resort stay  
11 with a paid honorarium for attending. Thereafter, between August and October 2003, Dr. H.P.K.  
12 wrote 121 new anti-platelet prescriptions, 93 percent of which were for Plavix. Between February and  
13 April 2004, Dr. H.P.K. wrote 95 new anti-platelet prescriptions, 95 percent of which were for Plavix.  
14 Between May and August 2004, Dr. H.P.K. wrote approximately 105 new Plavix prescriptions. Upon  
15 information and belief, Dr. H.P.K. was influenced to write these prescriptions because of kickbacks  
16 offered to him by BMS. At least some of the prescriptions written by this physician were paid for by  
17 private insurance companies.  
18

19 128. In February 2001, BMS tracked Dr. H.K. as writing 604 prescriptions for Glucophage  
20 within a three-month period. Between April and June 2002, Dr. H.K. wrote 34 new statin  
21 prescriptions, 85 percent of which were for Pravachol. Dr. H.K. was invited to attend a lavish dinner  
22 in or about October 2002. Upon information and belief, Dr. H.K. was influenced to write these  
23 prescriptions because of kickbacks given to him by BMS. At least some of the prescriptions written  
24 by this physician were paid for by private insurance companies.  
25

26 129. On or about July 2001, BMS paid for concert tickets for Dr. J.K. and several friends.  
27 Thereafter, between July and September 2001, Dr. J.K. wrote 11 new anti-platelet prescriptions, all of  
28

1 which were for Plavix, and 67 new statin prescriptions, 40 percent of which were for Pravachol.  
2 Between October and December 2001, Dr. J.K. wrote 6 new anti-platelet prescriptions, all of which  
3 were for Plavix, and 43 new statin prescriptions, 63 percent of which were for Pravachol. Between  
4 January and March 2002, Dr. J.K. wrote 15 new anti-platelet prescriptions, all of which were for  
5 Plavix, and 74 new statin prescriptions, 46 percent of which were for Pravachol. BMS also invited  
6 Dr. J.K. to attend a dinner and resort stay with a paid honorarium for attending in or about June 2002.  
7 Between August and October 2003, Dr. J.K. wrote 34 new anti-platelet prescriptions, all of which  
8 were for Plavix. Dr. J.K. continued to write prescriptions for Plavix and Pravachol into at least 2004.  
9 Upon information and belief, Dr. J.K. was influenced to write these prescriptions because of kickbacks  
10 provided to him by BMS. At least some of the prescriptions written by this physician were paid for by  
11 private insurance companies.  
12

13  
14 130. On or about June 2003, BMS invited Dr. P.K. to attend a lavish dinner and resort stay  
15 with a paid honorarium for attending. Thereafter, between August and October 2003, Dr. P.K. wrote  
16 45 new anti-platelet prescriptions, all of which were for Plavix. In fact, in all of BMS' tracking  
17 documents relator has for Dr. P.K. between December 2001 and May 2004, between 98 and 100  
18 percent of the anti-platelet prescriptions he wrote were for Plavix. Upon information and belief, Dr.  
19 P.K. was influenced to write these prescriptions because of kickbacks provided to him by BMS. At  
20 least some of the prescriptions written by this physician were paid for by private insurance companies.  
21

22 131. In November and December 1999 and again in May 2001, BMS used marketing funds  
23 to purchase liquor for Dr. Y.L.. In February 2001, BMS tracked Dr. Y.L. as writing 32 prescriptions  
24 for Glucophage and 4 prescriptions for Glucovance during a three-month period. Upon information  
25 and belief, Dr Y.L. was influenced to write these prescriptions because of kickbacks provided to him  
26 by BMS. At least some of the prescriptions written by this physician were paid for by private  
27 insurance companies.  
28

1       132.       In or about July 2001, BMS paid for expensive concert tickets for Dr. W.P.. In or about  
2 January 2002, BMS granted a "donation" to Dr. W.P.'s Korean American Medical Association.  
3 Thereafter, between April and June 2002, Dr. W.P. wrote 22 new anti-platelet prescriptions, 95 percent  
4 of which were for Plavix. Upon information and belief, Dr. W.P. was influenced to write these  
5 prescriptions because of kickbacks provided to him by BMS. At least some of the prescriptions  
6 written by this physician were paid for by private insurance companies.  
7

8       133.       In November 1999, August, September and October 2000, and January 2002, BMS  
9 used marketing funds to purchase liquor for Dr. C.S. During the time period in which BMS was  
10 providing Dr. C.S. kickbacks, BMS tracked Dr. C.S.'s prescription-writing practices. BMS documents  
11 show that 96 percent of the 24 anti-platelet prescriptions Dr. C.S. wrote between July and December of  
12 2001 were for Plavix. Upon information and belief, Dr. C.S. was influenced to write these  
13 prescriptions because of kickbacks given to him by BMS. At least some of the prescriptions written  
14 by this physician were paid for by private insurance companies.  
15

16       134.       BMS records also show that Dr. D.W.S. wrote 30 new statin prescriptions between July  
17 and September 2001, 70 percent of which were for Pravachol. He also wrote 35 new statin  
18 prescriptions between October and December 2001, 83 percent of which were for Pravachol. In the  
19 same time period he wrote 59 new anti-platelet prescriptions, 93 percent of which were for Plavix. Dr.  
20 D.W.S. continued consistently to write Plavix prescriptions and Pravachol prescriptions into at least  
21 2004. Upon information and belief, Dr. D.W.S. was influenced to write these prescriptions because of  
22 kickbacks provided to him by BMS. At least some of the prescriptions written by this physician were  
23 paid for by private insurance companies.  
24

25       135.       In or about July 1998, BMS treated Dr. H.T.Z. to an expensive lunch with liquor and  
26 cigars. Thereafter, in February 2001, BMS tracked him as writing 32 prescriptions for Glucophage  
27 over a three-month period. Between July and September 2001, Dr. H.T.Z. wrote 468 new statin  
28

1 prescriptions, 62 percent of which were for Pravachol, and 25 new anti-platelet prescriptions, 48  
2 percent of which were for Plavix. Between October and December 2001, he wrote 249 new statin  
3 prescriptions, 59 percent of which were for Pravachol, and 21 new anti-platelet prescriptions, 57  
4 percent of which were for Plavix. Upon information and belief, Dr. H.T.Z. was influenced to write  
5 these prescriptions because of kickbacks provided to him by BMS. At least some of the prescriptions  
6 written by this physician were paid for by private insurance companies.  
7

8 136. In or about May 2001, BMS invited Dr. S.V. to attend a lavish dinner. BMS offered to  
9 pay him an honorarium to attend. In February 2001, BMS had tracked Dr. S.V. as writing 95  
10 prescriptions for Glucophage over a three-month period. In 2003, Dr. S.V. wrote a significant number  
11 of Pravachol prescriptions. Upon information and belief, Dr. S.V. was influenced to write these  
12 prescriptions because of kickbacks provided to him by BMS. At least some of the prescriptions  
13 written by this physician were paid for by private insurance companies.  
14

15 137. In or about June 2003, BMS invited Dr. S.W. to lavish dinners and a resort stay, with a  
16 paid honorarium for attending. Thereafter, between August and October 2003, Dr. S.W. wrote 24 new  
17 anti-platelet prescriptions, all of which were for Plavix. During the same time period, Dr. S.W. also  
18 wrote many prescriptions for Pravachol. Upon information and belief, Dr. S.W. was influenced to  
19 write these prescriptions because of kickbacks provided to him by BMS. At least some of the  
20 prescriptions written by this physician were paid for by private insurance companies.  
21

22 138. In or about July 2001, BMS bought expensive concert tickets for Dr. J.Y.. Thereafter,  
23 between July and September 2001, Dr. J.Y. wrote 117 new statin prescriptions, 65 percent of which  
24 were for Pravachol, and 33 new anti-platelet prescriptions, 91 percent of which were for Plavix.  
25 Between October and December 2001, he wrote 110 new statin prescriptions, 71 percent of which  
26 were for Pravachol, and 45 new anti-platelet prescriptions, all of which were for Plavix. In 2002,  
27 BMS bought Dr. J.Y. an expensive gift basket for Christmas. Thereafter, from January to March 2002,  
28



1 Dr. J.Y. wrote 103 new statin prescriptions, 62 percent of which were for Pravachol, and 31 new anti-  
2 platelet prescriptions, 94 percent of which were for Plavix. Dr. J.Y. continued to write prescriptions  
3 for Plavix and Pravachol at least through 2004. Upon information and belief, Dr. J.Y. was influenced  
4 to write these prescriptions because of kickbacks provided to him by BMS. At least some of the  
5 prescriptions written by this physician were paid for by private insurance companies.  
6

7 139. Thus, BMS' fraudulent schemes actually caused physicians to write prescriptions. The  
8 physicians wrote these prescriptions, which were in turn submitted to private insurance companies for  
9 payment.

#### 10 **FIRST CAUSE OF ACTION**

11 **(By the Commissioner on Behalf of the People of the**  
12 **State of California and the Relators Against Defendant BMS for Violation of the**  
13 **Insurance Frauds Prevention Act, Insurance Code §§ 1871.7(a) & (b) for Violation of the**  
14 **Runners and Cappers Provision and Payment of Kickbacks)**

15 140. The Commissioner and Relators re-allege and incorporate the allegations in paragraphs  
16 1- 139 as if fully set forth herein.

17 141. Defendant caused to be presented, or knowingly assisted or conspired in presenting or  
18 causing to be presented, to the insurers in the State of California fraudulent claims that were induced  
19 by payments of kickbacks to physicians, in violation of Penal Code § 550 (b) (1), among other  
20 provisions.

21 142. Moreover, defendant knowingly caused to be made fraudulent bills intended to be  
22 presented to the insurers in connection with, or in support of, claims for the payment of compensation  
23 under contracts of insurance knowing that the statements contained false or misleading information  
24 concerning material facts, all in violation of Penal Code §550 (b) (2), among other provisions.

25 143. BMS' payment of kickbacks to physicians and pharmacists violated California Business  
26 and Professional Code § 650 and caused false claims to be submitted to insurance companies for the  
27 payment of health care benefits. Since violations of section 650 are illegal, compliance with this  
28

1 provision is material to treatment of claims for reimbursement by private insurance companies. Had  
2 the private insurance companies known that prescriptions for BMS drugs, including Abilify, Avapro,  
3 BuSpar, Cefzil, Glucophage, Glucovance, Monopril, Plavix, Pravachol, Praviguard, Serzone, and  
4 Tequin, had been written because physicians had been paid kickbacks by BMS to do so, these  
5 companies would not have provided reimbursement for these prescriptions.  
6

7 144. The kickbacks described herein are strictly illegal and have had the direct effect of  
8 greatly increasing the amount of Abilify, Avapro, BuSpar, Cefzil, Glucophage, Glucovance, Monopril,  
9 Plavix, Pravachol, Praviguard, Serzone, and Tequin prescriptions and the indirect effect of increasing  
10 the amount of money spent by private insurance companies for reimbursement of prescriptions.

11 145. The payment of these kickbacks represents the inducement of health care benefits  
12 through a pattern and practice of fraudulent conduct and constitutes false claims within the meaning of  
13 Cal. Ins. Code § 1871.7(b) and Sections 549 & 550(a)(6) of the California Penal Code, among other  
14 provisions.  
15

16 146. Moreover, the payment of these kickbacks violates the "runners and cappers" provision  
17 of Section 1871.7(a), as BMS' kickback scheme comprised of the company "employing" physicians  
18 by paying them kickbacks in order to "procure clients or patients to obtain services or benefits under a  
19 contract of insurance." In the alternative, BMS' payment of kickbacks violated the "runners and  
20 cappers" provision of Section 1871.7(a), as BMS' employment of sales representatives to provide  
21 kickbacks to physicians in order to generate prescriptions that would eventually be paid for by private  
22 insurance companies constitutes the unlawful and knowing employment of "runners, cappers, steerers,  
23 or other persons . . . to procure clients or patients to perform or obtain services or benefits under a  
24 contract of insurance or that will be the basis for a claim against an insured individual or his or her  
25 insurer." The Commissioner and Relators know and believe that these practices continued beyond the  
26 time at which they were at Bristol-Myers Squibb, and upon information and belief, this pattern and  
27  
28

1 practice continues in the present.

2 **SECOND CAUSE OF ACTION**

3 **(By the COMMISSIONER On Behalf Of the People of the**  
4 **State Of California and the Relators, Against Defendant BMS, For Violation of the**  
5 **Insurance Frauds Prevention Act, Insurance Code § § 1871.7(a)(b) and 1871.7(4))**

6 147. The Commissioner and Relators re-allege and incorporate the allegations in paragraphs  
7 1- 139 as if fully set forth herein.

8 148. The Commissioner and Relators are informed and believe, and upon such information  
9 and belief alleges, that, during the period from March 1999 to the present, by its conduct described  
10 above in paragraphs 1 through 137, inclusive, defendant paid physicians kickbacks to induce the  
11 physicians to prescribe pharmaceutical products manufactured by BMS. These payments to  
12 physicians violated Insurance Code section 1871.7(a) and led to the submission of false claims in  
13 violation of Insurance Code section 1871.7(b).

14 149. Defendant caused to be presented, or knowingly assisted or conspired in presenting or  
15 causing to be presented, to the insurers in the State of California fraudulent claims that were induced  
16 by payments of kickbacks to physicians, in violation of Penal Code §550 (b) (1).

17 150. The Commissioner and Relators are informed and believe, and upon such information  
18 and belief alleges, that by its conduct described above in paragraphs 1 through 137 inclusive,  
19 defendant knowingly caused to be made fraudulent bills intended to be presented to the insurers in  
20 connection with, or in support of, claims for the payment of compensation under contracts of insurance  
21 knowing that the statements contained false or misleading information concerning material facts, all in  
22 violation of Penal Code §550 (b) (2).

23 151. The Commissioner and Relators are informed and believe, and upon such information  
24 and belief allege, that, by its conduct described above in paragraphs 1 through 137, inclusive, and its  
25 violation of Penal Code §§ 550 (a) (6 and (10) and 550 (b) (1) and (2), defendant violated Penal Code  
26 § 1871.7.  
27  
28

1       152.       Insurance Code section 1871.7(4) grants this Court the authority to issue prohibitory  
2 injunctions, including preliminary injunctions.

3       153.       As a result of defendant's acts, the People of the State of California suffer increased  
4 rates for health insurance and will continue to sustain great and irreparable injury in that the full extent  
5 of the injury suffered by the People is difficult or impossible to calculate. Further, it is impracticable  
6 for individual health insurance beneficiaries to establish the harm to them or to obtain relief in a  
7 multiplicity of actions. The Legislature has charged the Commissioner with protecting the interests of  
8 the People of California from fraud and fraudulent billing in their insurance transactions.

9  
10       154.       The Commissioner and Relators are informed and believe that BMS continues to  
11 engage in the conduct that Commissioner and Relators allege violate Insurance Code section 1871.7,  
12 and Penal Code §§ 549, 550 (a) (6) and (10) and 550 (b) (1) and (2). In fact, Commissioner and  
13 Relators are informed and believe that as late as January 2011, BMS was still providing meals and  
14 honoraria to physicians in order to encourage them to write more prescriptions for BMS products.

15  
16       155.       The Commissioner and Relators pray that this Court issue an injunction prohibiting  
17 BMS and its employees and agents and affiliated companies from paying physicians who have  
18 performed no substantive research on BMS products from presenting lectures on BMS products which  
19 have been prepared by BMS and its employees and agents.

20  
21       156.       The Commissioner and Relators pray that this Court issue an injunction prohibiting  
22 BMS and its employees and agents and affiliated companies from paying for and providing meals,  
23 non-alcoholic beverages, and alcoholic beverages for physicians, the family members of physicians,  
24 and the employees of physicians.

25       157.       The Commissioner and Relators pray that this Court issue an injunction prohibiting  
26 BMS and its employees and agents and affiliated companies from compensating physicians, the  
27 family members of physicians, and the employees of physicians for meals, non-alcoholic beverages  
28

1 and alcoholic beverages.

2 158. The Commissioner and Relators pray that this Court issue an injunction prohibiting  
3 BMS and its employees and agents and affiliated companies from providing to, or compensating  
4 physicians, the family members of physicians, and the employees of physicians for tickets to sporting  
5 events, musical concerts and/or dance performances, and/or theatrical events.  
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Commissioner and Relators pray for judgment against Defendant, in an  
9 amount to be proved at trial, as follows:

10 Pursuant to the FIRST CAUSE OF ACTION:

11 TO THE PEOPLE OF THE STATE OF CALIFORNIA:

12 (a) That civil penalties of \$10,000 be imposed for each and every fraudulent claim  
13 defendant presented or caused to be presented to an insurance company;  
14

15 (b) That defendant pay damages sufficient to disgorge its unlawful profit and provide  
16 restitution for its fraudulent conduct;  
17

18 (c) That treble damages be imposed;

19 (d) That pre- and post-judgment interest be awarded, along with reasonable attorneys' fees,  
20 costs, and expenses which were necessarily incurred in bringing and pressing this case;

21 (e) That this Court award such other and further relief as it deems proper.

22 TO THE RELATORS:

23 (a) That all reasonable attorneys' fees, costs, and expenses that Relators necessarily incurred in  
24 bringing and pressing this case be awarded;

25 (b) That the Relators be awarded the maximum percentage of any recovery allowed to  
26 them pursuant to Cal. Ins. Code § 1871.7(g)(a)(A)(i) and/or § 1871.7(2)(A);  
27

28 (c) That this Court award such other and further relief as it deems proper.

1 Pursuant to the SECOND CAUSE OF ACTION:

2 (a) That a restraining order and/or preliminary injunction be imposed mandating that the  
3 BMS, its agents, employees and affiliates be prohibited from:

4 (1) paying physicians who have performed no substantive research on BMS drugs  
5 from presenting lectures on BMS products which have been prepared by BMS and its employees and  
6 agents; and

7 (2) directly paying for or providing meals, non-alcoholic beverages, alcoholic  
8 beverages provided to physicians or their families or the employees of physicians; and

9 (3) compensating physicians, the family members of physicians, and the  
10 employees of physicians for meals, non-alcoholic beverages and alcoholic beverages; and

11 (4) providing to, or compensating physicians, the family members of physicians,  
12 and the employees of physicians for tickets to sporting events; and tickets to musical concerts and/or  
13 dance performances, and/or theatrical events.

14 (b) For the costs and attorneys' fees incurred in this suit incurred by the Commissioner and Relators;

15 (c) That this Court award any such other relief that it may deem just and proper.

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20 **DEMAND FOR JURY TRIAL**

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22 The Commissioner and Relators hereby demand trial by jury as to all issues so triable.

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28 ///

1 Dated: February 16, 2011

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14 **Relators**

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